

EXHIBIT B

1 ANNETTE L. HURST (State Bar No. 148738)
2 DANIEL N. KASSABIAN (State Bar No. 215249)
3 ELENA M. DIMUZIO (State Bar No. 239953)
4 HELLER EHRMAN LLP
5 333 Bush Street
6 San Francisco, California 94104-2878
7 Telephone: +1.415.772.6000
8 Facsimile: +1.415.772.6268
9 E-mail: Annette.Hurst@HellerEhrman.com
10 Daniel.Kassabian@HellerEhrman.com
11 Elena.DiMuzio@HellerEhrman.com

12 Attorneys for Plaintiffs
13 CANTER & ASSOCIATES, LLC, and
14 LAUREATE EDUCATION, INC.

15 GAYLE M. ATHANACIO (State Bar No. 130068)
16 SONNENCHEIN NATH & ROSENTHAL LLP
17 525 Market Street, 26th Floor
18 San Francisco, California 94105-2708
19 Telephone: +1.415.882.5000
20 Facsimile: +1.415.882.0300
21 E-mail: GAthanacio@Sonnenschein.com

22 ATTORNEYS FOR DEFENDANT
23 TEACHSCAPE, INC.

24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA
26 SAN JOSE DIVISION

27 CANTER & ASSOCIATES, LLC, and
28 LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**STIPULATED [AND PROPOSED]
PROTECTIVE ORDER**

Judge: The Honorable Richard Seeborg

1 WHEREAS, disclosure and discovery activity in above-captioned proceeding (the
2 "Proceeding") are likely to involve production of confidential, proprietary, or private
3 information within the meaning of Federal Rule of Civil Procedure 26(c)(7) for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted;

6 WHEREAS, the parties, through their respective counsel, have agreed that a
7 Stipulated Protective Order preserving the confidentiality of certain documents and
8 information seek entry of the same the United States District Court for the Northern District
9 of California;

10 WHEREAS, parties acknowledge that this Stipulated Protective Order creates no
11 entitlement to file confidential information under seal and further acknowledge that Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
13 that will be applied when a party seeks permission from the court to file material under seal;
14 and

15 WHEREAS, the parties have established good cause for entry of this Stipulated
16 Protective Order;

17 IT IS HEREBY STIPULATED AND AGREED, SUBJECT TO THE APPROVAL
18 AND ORDER OF THE COURT, THAT:

19 1. Any party or third-party may designate as "Confidential" or "Highly
20 Confidential" all or any part of any disclosure, discovery, and other materials produced
21 and/or served by any party or third-party, including without limitation, documents, things,
22 electronic data, interrogatory answers, answers to deposition questions, and responses to
23 requests for admission, which contain sensitive financial, patent, trademark, copyright, trade
24 secret, marketing, customer, research, or product development information, or any other
25 non-public information of such a nature as to be protectable under Federal Rule of Civil
26 Procedure 26(c)(7).

27 2. Confidential and Highly Confidential information, including all information
28 derived therefrom, and all copies, summaries, abstracts, excerpts, indices, and descriptions

1 of such material shall be held in confidence by the receiving party, shall be used only by
 2 persons permitted access to it under this Order, and shall not be used for any purpose other
 3 than in connection with this Proceeding, defined herein as the above-captioned action, any
 4 appeal therefrom, and remands thereto. Confidential and Highly Confidential information
 5 shall not be used for any research, development, manufacture, intellectual property—i.e.,
 6 patent, copyright, or trademark—filing or prosecution, financial, commercial, marketing,
 7 business, regulatory, other litigation, or other competitive purpose except as required by
 8 law.

9 3. The designation of material or information as Confidential information by the
 10 producing party constitutes the representation of that party that it reasonably and in good
 11 faith believes that the designated material is not publicly available and/or is available to
 12 members of the public on a limited basis only upon permission of the party or a third-party.

13 4. The designation of material or information as Highly Confidential information
 14 by the producing party constitutes the representation of that party that it reasonably and in
 15 good faith believes that the designated material is sensitive financial, patent application,
 16 trademark application, copyright application, trade secret, marketing, customer, research,
 17 manufacture, regulatory, commercial, business, or product development information,
 18 including sensitive business information relating to licensing, projected future sales, pricing,
 19 business strategies, business arrangements, volumes, revenues, costs or profits for master's
 20 degree or graduate course programs.

21 Designation Procedure

22 5. Any document or thing that constitutes or contains Confidential or Highly
 23 Confidential information shall be stamped with the legend "CONFIDENTIAL,"
 24 "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER," "HIGHLY CONFIDENTIAL
 25 – ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL – ATTORNEYS EYES
 26 ONLY – SUBJECT TO PROTECTIVE ORDER" as reasonably appropriate by the party or
 27 third-party producing it. Anything that cannot be so marked on its face shall be marked by
 28 placing the appropriate legend on a container or package in which the thing is produced or

1 on a tag attached thereto. Each page of each document and each thing produced pursuant to
2 discovery in this action shall bear a unique identifying (Bates) number with a prefix
3 identifying the party or third-party producing it.

4 6. Any material provided for inspection in this Proceeding is to be treated by the
5 receiving party as Highly Confidential information pending the copying and delivery of any
6 copies of the same by the producing party. After production, the information in such
7 documents or things will be treated consistent with any legend produced on each document
8 or thing. Inspection of documents or things by any party shall be conducted only by outside
9 counsel eligible under paragraph 10(a) below.

10 7. Any disclosure, written interrogatories, requests for admission, responses
11 thereto, or any testimony adduced at a deposition upon written questions that constitutes or
12 contains Confidential or Highly Confidential information shall be labeled or marked with
13 the legend "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY
14 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" as appropriate by the party
15 serving the disclosure, discovery request or response, or providing the testimony on the first
16 page of that document near the caption. Another label with the appropriate legend shall be
17 set forth at the beginning of every disclosure section, discovery request or response, or
18 testimony in response to a written question, that specifically contains Confidential or Highly
19 Confidential information, so that disclosures, discovery requests or responses, or testimony
20 that do not contain Confidential or Highly Confidential information are not subject to this
21 Order.

22 8. Deposition testimony taken in connection with this Proceeding temporarily
23 will be designated as Highly Confidential information for up to thirty (30) calendar days
24 from both parties' receipt of a transcript of the deposition, and the parties agree to mark the
25 first page of the deposition transcript with the legend "HIGHLY CONFIDENTIAL –
26 SUBJECT TO PROTECTIVE ORDER" in accord with this temporary designation. Within
27 thirty (30) calendar days of such receipt, parties and third-parties must designate as
28 Confidential or Highly Confidential specific testimony, by transcript line and page number,

1 in writing and deliver the designations, if any, to the parties, whereupon each party shall
2 attach a copy of such written designation to the face of the transcript and each copy thereof
3 in that party's possession, custody, or control. Otherwise the parties may treat the
4 testimony as no longer subject to this Order. A deponent may review the transcript of his or
5 her deposition at any time.

6 9. Documents and things produced without a legend designating the material
7 Confidential or Highly Confidential shall not be subject to this Protective Order unless
8 otherwise agreed by the parties or ordered by the Court, or otherwise designated
9 Confidential or Highly Confidential in accordance with the provisions of paragraphs 27-28
10 of this Order.

11 **Access to Confidential Information**

12 10. Highly Confidential information may be disclosed only to the following
13 Qualified Persons:

14 a. Outside counsel retained by the receiving party as counsel for this
15 Proceeding, the paralegals, assistants, and employees of the respective law firms of such
16 outside counsel to the extent such persons' duties and responsibilities require access to
17 material designated Confidential or Highly Confidential and have an express agreement
18 with their respective law firms to maintain the confidentiality of their work;

19 b. One in-house counsel for each party provided that the attorney is in
20 compliance with paragraph 13.

21 c. Any independent outside consultant or expert to the parties that is
22 assisting outside counsel in connection with this Proceeding, is not a current employee of
23 any of the parties in the litigation, and is in compliance with the requirements of paragraphs
24 14-15 herein;

25 d. the Court and any members of its staff to whom it is necessary to
26 disclose Confidential or Highly Confidential information for the purpose of assisting the
27 Court in this Proceeding and stenographic employees, court reporters, typists, interpreters,
28 and translators for the sole purpose of recording, transcribing, translating or interpreting

1 testimony, documents, or other information relating to this Proceeding;

2 e. any person who prepared a particular document or thing, who is listed
3 on the document as a sender or recipient of the document, or who otherwise had access to or
4 knowledge of the Confidential or Highly Confidential information disclosed in the
5 particular document or thing, but the disclosure shall be limited to the specific Confidential
6 or Highly Confidential information disclosed in the particular document or thing;

7 f. any present officer, director, or employee of the party or third-party
8 who produced the Confidential or Highly Confidential information;

9 g. any person to whom the producing party or third-party agrees
10 Confidential or Highly Confidential or information may be disclosed; and

11 h. independent litigation support service personnel, litigation consultants,
12 outside exhibit preparation companies, or litigation study groups retained by a party for
13 litigation support with whom such outside counsel work in connection with this Proceeding
14 to the extent such persons have an express agreement with outside counsel to maintain the
15 confidentiality of their work, and provided that such personnel are regularly engaged in the
16 provision of such services, and are not engaged in the research, development, manufacture,
17 marketing, or sale of master's degree and graduate course programs in the field of
18 education;

19 i. outside copying services.

20 11. Confidential information may be disclosed only to the following Qualified
21 Persons:

22 a. any of the persons entitled to receive Highly Confidential information
23 identified in paragraph 10 above; and

24 b. one present officer of each party provided that the officer is in
25 compliance with paragraph 17.

26 12. All Confidential and Highly Confidential information and any copies or
27 extracts thereof designated by another party or third-party shall be retained by the receiving
28 party, including Qualified persons associated with the receiving party, in a secure and safe

1 area and shall exercise due and proper care with respect to the storage, custody, use and/or
2 dissemination of such material

3 13. A party desiring to disclose another party's Confidential or Highly
4 Confidential information to in-house counsel under paragraph 10(b) may do so provided
5 that:

6 (a) The in-house counsel is a licensed attorney;

7 (b) The in-house counsel agrees that after exposure to another parties'
8 confidential information under this protective order, and until one (1) year after the
9 conclusion of this Proceeding, the attorney will not to partake in competitive
10 decisionmaking – i.e., advice and participation in any or all of the party's decisions (pricing,
11 sales, marketing, product design, and regulatory) regarding that party's master's degree and
12 graduate course programs in the field of education being licensed to and/or offered through
13 universities or other educational institutions in the United States – with the exception of
14 decisions made in furtherance of the conduct or settlement of this Proceeding; and

15 (c) before any disclosure the party shall provide to the attorney a copy of
16 this Order, which the attorney shall read and upon reading shall sign a Certification in the
17 form annexed hereto as Exhibit A, and serve (by hand delivery, courier, e-mail, or facsimile
18 transmission) a copy of said Certification upon counsel for the producing parties.

19 14. A party desiring to disclose another party's Confidential or Highly
20 Confidential information to any outside consultant or expert under paragraph 10(c) before
21 any disclosure shall:

22 a. provide to such person a copy of this Order, which he or she shall read
23 and upon reading shall sign a Certification in the form annexed hereto as Exhibit A;

24 b. obtain from such person a copy of such person's Certification, a
25 resume (curriculum vitae), and the following information, (i) a list of companies for whom
26 such person has consulted in any capacity within the last year, (ii) a list of any other cases in
27 which such person has testified as an expert at trial or by deposition within the preceding
28 four (4) years; and a list of all publications authored by such person within the preceding ten

1 (10) years;

2 c. for every such person, serve (by hand delivery, courier, e-mail, or
3 facsimile transmission) a copy of said Certification, resume (curriculum vitae) and
4 information described in subparagraph 14(b) upon counsel for the producing parties.

5 15. Upon receipt of a Certification and resume (curriculum vitae) and information
6 described in subparagraph 14(b) of an outside consultant or expert, the producing party shall
7 then have ten (10) court days to serve (by hand delivery, same day courier, e-mail, or
8 facsimile transmission) a written objection to the proposed disclosure of its Highly
9 Confidential and/or Confidential information, which shall state with specificity the
10 reason(s) for such objection. If counsel for the producing party objects within ten (10) court
11 days, there shall be no disclosure to such consultant or expert except by further order of the
12 Court pursuant to a motion brought by the producing party within seven (7) court days of
13 the service of the objection. On any motion brought pursuant to this paragraph, the
14 producing party shall bear the burden of showing why disclosure to that consultant or expert
15 should be precluded. Failure to timely object and to timely file a motion with the Court
16 operates as a waiver of the objection by the producing party and the consultant or expert
17 will be a Qualified Person with access to the producing party's Confidential or Highly
18 Confidential information.

19 16. If counsel wish to disclose material designated Confidential or Highly
20 Confidential to the persons described in subparagraphs 10(g)-(i) above, counsel shall first
21 obtain a signed Certification in the form of the annexed Exhibit A. The Certification shall
22 be signed by the company, firm, or group, or solo practitioner retained by the party, and a
23 single Certification by the company, firm, group, or solo practitioner shall be sufficient to
24 cover all employees or other individuals paid by the company, firm, or group. Counsel
25 retaining the persons described in subparagraphs 10(g)-(i) shall retain the original of each
26 such signed Certification. Service of the Certification shall not be required.

27 17. A party desiring to disclose another party's Confidential information to its
28 present officer under subparagraph 11(b) before any disclosure the party shall provide to the

1 officer a copy of this Order, which the officer shall read and upon reading shall sign a
2 Certification in the form annexed hereto as Exhibit B, and serve (by hand delivery, courier,
3 e-mail, or facsimile transmission) a copy of said Certification upon counsel for the
4 producing parties.

5 18. Only Qualified Persons, the deponent, and his or her attorney (if any), shall be
6 allowed to attend any portion of a deposition in which Confidential or Highly Confidential
7 information is used or elicited from the deponent. Counsel for the designating party may
8 also request that all persons other than the witness, the court reporter, those individuals
9 specified in paragraph 10, and counsel for the witness (if a third-party witness) leave the
10 deposition room during any portion of a deposition which inquires into matters deemed
11 Highly Confidential by a party or third-party. Counsel for the designating party may also
12 request that all persons other than the witness, the court reporter, those individuals specified
13 in paragraphs 10-11, and counsel for the witness (if a third-party witness) leave the
14 deposition room during any portion of a deposition which inquires into matters deemed
15 Confidential by a party or third-party. The failure of individuals other than those specified
16 in the previous two sentences to leave the deposition room during any portion of the
17 deposition which inquires into matters deemed Confidential or Highly Confidential by a
18 party or third-party shall constitute justification for counsel to instruct the witness that he or
19 she shall not answer the question(s) posed.

20 19. This Order shall not limit a party's examination, at a deposition, hearing, or at
21 trial, of persons who are not authorized to receive Confidential or Highly Confidential
22 information under the terms of this Order, so long as such examination concerns
23 Confidential or Highly Confidential information that the witness authored, received, or
24 previously had access to or knowledge of, as demonstrated by the Confidential or Highly
25 Confidential information itself or by foundation testimony during a deposition, hearing or
26 trial. This Order shall not prevent counsel from examining a witness in a good-faith effort
27 to determine whether he or she authored, received, or previously had access to or
28 knowledge of Confidential or Highly Confidential information.

20. Nothing shall prevent disclosure beyond the terms of this Order if the party designating the material as Confidential or Highly Confidential consents in writing to such disclosure, or if the Court, after reasonable written notice to all affected parties, orders such disclosure.

21. Nothing contained in this Order shall preclude any party from using its own Confidential or Highly Confidential information in any manner it sees fit, without prior consent of any party or the Court.

22. Notwithstanding such designation, Confidential or Highly Confidential information does not include information obtained independent of this Proceeding as to which no obligation of confidentiality applies. Accordingly, nothing in this Order shall prevent any person, including a Qualified Person, from making use of any information that is designated Confidential or Highly Confidential if such information:

a. was lawfully in his or her possession prior to receipt under the provisions of this Order;

b. was or becomes available to the public through no fault of a receiving party; or

c. was or is obtained from a source not under an obligation of secrecy to the producing party.

23. Nothing in this Order shall restrict any party's outside or in-house counsel from rendering advice to its clients with respect to this Proceeding and, in the course thereof, relying upon Highly Confidential information, provided that in rendering such advice, counsel shall not disclose any other party's Highly Confidential information other than in a manner provided for in this Order.

Challenging Designation of Confidential Information

24. A party shall not be obligated to challenge the propriety of a Confidential or Highly Confidential information (or change in designation) at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

25. In the event that a party disagrees at any time with a Confidential or Highly

1 Confidential information designation made by another party or a third-party, the following
2 procedure shall be used:

3 (a) The party seeking such removal shall serve the producing party or
4 third-party written notice thereof (by hand delivery, courier, e-mail, or facsimile
5 transmission), specifying the documents, things, or information for which such removal is
6 sought and the reasons for the request. The producing party or third-party shall have ten
7 (10) court days after service of the notice within which to object in writing to the removal of
8 protection afforded by this Order and specifying why protection under this Order is
9 appropriate. Failure to object within the requisite time limit is deemed a waiver of any
10 claim to protection for that specific document, thing, or information designated as
11 Confidential Information under this Order.

12 (b) If, after service of the objection and conferring in good faith, the
13 parties, or the party and third-party, cannot reach agreement concerning the matter, then the
14 party seeking the removal of protection for the designated Confidential or Highly
15 Confidential information shall file and serve a motion with the Court (in compliance with
16 Civil Local Rule 79-5, if applicable); the designated material shall continue to be treated as
17 Confidential or Highly Confidential information until the issue is resolved by Order of this
18 Court or by agreement of the parties or the party and third-party.

19 (c) On any motions arising out of the designation of any material as
20 Confidential Information under this Order, the burden of justifying the designation shall lie
21 with the producing party or third-party.

22 **Inadvertent Production/Use of Confidential Information and Changes in Designation**

23 26. Inadvertent production of any document or information without a designation
24 of Confidential or Highly Confidential information will not be deemed to waive a later
25 claim as to its confidential nature or stop the producing party from designating said
26 document or information as Confidential or Highly Confidential information at a later date.

27 27. Any producing party may change a designation to Confidential or Highly
28 Confidential information (or withdraw a designation) regarding any material that it has

1 produced, provided, however, that such change in designation shall be effective only as of
2 the date of such change. Such change in designation (or withdrawal) shall be accomplished
3 by notifying counsel for each party in writing of such change in designation (or
4 withdrawal).

5 28. Upon receipt of any written change in designation per paragraph 27 counsel of
6 record shall: (i) not make any further disclosure or communication of such newly
7 designated material except as provided for in this Order; (ii) take reasonable steps to notify
8 any persons known to have possession of any material with the original designation of the
9 effect of such a change in designation under this Order; and (iii) promptly retrieve all copies
10 and transcriptions of such originally designated material from any persons known to have
11 possession of any such originally designated material who are not Qualified Persons under
12 paragraphs 10 or 11 above in light of the change of designation to the extent practicable.
13 Properly marked documents shall be promptly provided by the producing party of any such
14 newly designated material.

15 29. Under no circumstances shall a party or third-party change or remove the
16 designation of Confidential or Highly Confidential information, or object to such change or
17 removal, to vex or harass another party. No such change in designation shall be effective to
18 limit another party's contemplated use of the designated material in question at any
19 deposition, hearing, or trial if the change in designation is made less than seventy-two (72)
20 hours prior to the scheduled commencement of such deposition, hearing, or trial.

21 30. If Confidential or Highly Confidential information is used during depositions
22 in contravention of other provisions of this Order, it shall not lose its confidential status
23 through such use, and counsel shall exercise their best efforts and take all steps reasonably
24 required to protect its confidentiality during and subsequent to such use. If Confidential or
25 Highly Confidential information is disclosed to a deposition witness in contravention of
26 other provisions of this Order, and the witness has testified concerning that information, the
27 witness may be cross-examined with respect to the document(s) or information disclosed
28 during that deposition.

31. If Confidential or Highly Confidential information is disclosed to any person other than in the manner authorized by this Order, the party responsible for the disclosure shall within five (5) court days of learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall use reasonable efforts to obtain the prompt return of any such Confidential or Highly Confidential information and to bind each unauthorized person or party who received such information to the terms of this Protective Order by providing a copy of this Protective Order to such unauthorized person or party and requesting such unauthorized person or party to sign the Certification attached hereto as Exhibit A. The requirements set forth in this paragraph shall not prevent the producing party from applying to the Court for further or additional relief.

Inadvertent Production/Use of Privileged Information

32. If information subject to a claim of attorney-client privilege, attorney work product immunity or other legal privilege protecting information from discovery is inadvertently produced in any way, such production shall not prejudice or otherwise constitute a waiver (subject matter or otherwise) of, or estoppel as to, any claim of privilege, work product immunity, or other ground for withholding production to which the producing party or other person otherwise would be entitled. If a written claim of inadvertent production is made by a producing party to a receiving party pursuant to this paragraph with respect to information or a document supplied to a receiving party, upon the receiving party's receipt of such written notification of the producing party's discovery of inadvertent production of such information or document, the receiving party shall:

(a) not make any further copies or other reproductions or transcriptions of the inadvertently disclosed information or document; and

(b) destroy or return to the supplying party every original and every copy, reproduction, or transcription of all such inadvertently produced information or documents possessed by the receiving party and by those persons to whom the receiving party may have disclosed such information.

33. However, recognizing the need for the parties to prepare for their cases based

1 on the discovery that is produced, if any information, document, or tangible thing is used in
 2 a court hearing, deposition, as an exhibit to a motion, is referenced in an expert report or
 3 pretrial order, or is otherwise used openly in the case, any claim of inadvertent production
 4 must be made within ten (10) court days after such use.

5 **Party's Disclosure of Confidential Information of Nonparties**
 6 **or Pursuant To Subpoena**

7 34. A party may temporarily withhold production of otherwise discoverable
 8 information sought in a discovery request (e.g., interrogatory, request for production,
 9 request for admission) if the party is under an obligation to a third-party not to disclose such
 10 information. In such an event, except for information subject to a protective order or
 11 confidentiality order by another court, such party shall:

12 (a) timely serve a written objection to the production of the information in
 13 question on the basis of its obligation to a third-party not to disclose such information;

14 (b) promptly provide to the third-party whose confidentiality interests are
 15 implicated (i) notice of the pending request to disclose the information in question, and (ii) a
 16 copy of this Protective Order;

17 (c) within thirty (30) days of serving its response to the request for the
 18 discoverable information, designate it as Confidential or Highly Confidential information
 19 and produce it in compliance with this Order, unless that third-party or the party, within the
 20 thirty (30) days of the party serving its response to the request, moves for or obtains from
 21 this Court a protective order precluding such production.

22 35. Nothing in paragraph 34 shall prevent a party from withholding information
 23 beyond the thirty (30) days based on its timely asserted written objection other than any
 24 non-disclosure obligation to a third-party, or during the pendency of a motion to compel
 25 seeking to resolve these other written objections. The withholding of the information on
 26 bases other than an obligation of non-disclosure to a third-party shall not extend the
 27 aforementioned period by which the party or third-party must seek a protective order
 28 specifically with respect to the non-disclosure obligation to the third-party.

36. Any party that is served with a subpoena or other notice compelling the production of any Confidential or Highly Confidential information produced by the other party or a third-party is obligated to give prompt telephonic and written notice (by hand delivery, courier or facsimile transmission) to that original producing party of such subpoena or other notice. In any event, such notice shall be given within five (5) court days of service of the subpoena or other notice. If the original producing party takes steps to oppose the subpoena, then the party served with the subpoena shall not disclose the pertinent information until the Court has resolved the issue. Absent Court order, production or disclosure shall not be made before notice is given to the original producing party and the original producing party has had at least ten (10) court days to react after receiving such notice. Upon receiving such notice, the original producing party shall bear the burden to oppose, if it deems appropriate, the subpoena on grounds of confidentiality.

Use of Confidential Information in Filings and in Open Court

37. Nothing herein shall be construed to affect in any manner the admissibility at trial of any document, testimony, or other evidence.

38. Without written permission from the designating party or a court order secured after appropriate notice to all interested persons, a receiving party may not file in the public record in this action any Confidential or Highly Confidential information, including quotations or other parts thereof, of the designating party. A designating party may file in the public record any Confidential or Highly Confidential information is has designated and such filing, unless inadvertent, will result in that information no longer being subject to this Order.

39. A party that seeks to file under seal any Confidential or Highly Confidential information must comply with Civil Local Rule 79-5. In addition, the party should indicate the source and level of confidentiality on the first page of the pleading or other document to be filed under seal in the form "SUBMITTED UNDER SEAL – [HIGHLY] CONFIDENTIAL INFORMATION OF [DESIGNATING PARTY]" so as to enable the parties to identify the appropriate Qualified Persons that may view the filing.

1 40. To the extent that a receiving party (or a witness called by a receiving party)
2 contemplates using Confidential or Highly Confidential information, which was produced
3 by another party, at trial or a hearing in open court in this Proceeding, the receiving party
4 shall have the obligation to provide notice (either in writing or in open court) to the
5 producing party of its intent. The producing party shall have an opportunity to respond to
6 that notice before any of its Confidential or Highly Confidential information may be used
7 by any other party at trial or a hearing in open court. In the event that any Confidential or
8 Highly Confidential information is used at trial or hearing in open court in this Proceeding
9 because a request to conduct the trial or hearing in closed court or in camera was not
10 granted, the Confidential or Highly Confidential information shall remain subject to this
11 Order.

12 **Disposition of Confidential Materials upon Conclusion of Proceeding**

13 41. Upon the conclusion of this Proceeding, at the written request and option of
14 the producing party, all Confidential or Highly Confidential information and any and all
15 copies and transcriptions thereof, shall be destroyed or returned within ninety (90) calendar
16 days to the producing party, provided, however, that outside counsel may retain all
17 documents and things that contain or reflect their attorney work product (e.g., notes,
18 memoranda, drafts of pleadings, deposition summaries, document review summaries,
19 documents reviewed in preparation for depositions, hearings, or trial whether introduced or
20 not), all correspondence, all pleadings, all deposition transcripts, all expert reports, all
21 deposition, hearing and trial exhibits, and all court filed documents even though they
22 contain Confidential or Highly Confidential information, but such retained work product
23 and documents shall remain subject to the terms of this Order. Accordingly, upon final
24 termination of this action, no one other than outside counsel shall retain any information
25 designated Confidential or Highly Confidential obtained in the course of this Proceeding.
26 At the written request of the producing party, any person or entity having received
27 recordings, notes, memoranda, summaries or other written materials, and all copies thereof,
28 relating to or containing its Confidential or Highly Confidential information shall deliver to

1 the producing party a declaration confirming that reasonable efforts have been made to
2 assure that all such Confidential or Highly Confidential information and any copies thereof,
3 any and all records, notes, memoranda, summaries or other written material regarding the
4 Confidential or Highly Confidential information (except for attorney work product and
5 documents permitted to be retained by outside counsel as stated above), have been
6 destroyed or delivered in accordance with the terms of this Order.

7
Miscellaneous Provisions

8 42. This Order shall be binding upon the parties to this Proceeding and signatories
9 to the Certification, including their successor(s) and assigns, and their respective attorneys,
10 agents, representatives, officers and employees.

11 43. This Order shall apply to all information and material produced in this
12 Proceeding, including all previously produced information and material prior to the
13 execution of this Order by the Court.

14 44. Unless the parties stipulate otherwise, evidence of the existence or
15 nonexistence of a designation under this Order shall not be admissible as proof of a claim or
16 defense in this Proceeding and in no way constitutes an admission by any party that any
17 information designated pursuant to this Order is or is not proprietary, confidential, and/or a
18 trade secret.

19 45. By written agreement of the parties, or upon motion and order of the Court,
20 the terms of this Order may be amended or modified.

21 46. This Order shall continue in force until amended or superseded by express
22 order of the Court. This Order shall survive termination of this Proceeding, including any
23 final judgment, appeal, or settlement to the extent the Confidential or Highly Confidential
24 information is not or does not become known to the public.

25 47. Nothing in this Order shall prejudice the right of any party to oppose
26 production of any information for lack of relevance, privilege, or any ground other than
27 confidentiality.

28 48. In the event that a new party is added, substituted, or brought in, this Order

1 will be binding on and inure to the benefit of the new party, subject to the right of the new
2 party to seek relief from or modification of this Order.

3 49. The entry of this Order does not prevent any party from seeking a further
4 order of this Court pursuant to Federal Rule of Civil Procedure 26(c).

5
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 Dated: November 27, 2007

HELLER EHRMAN LLP

8 By /s/ DANIEL N. KASSABIAN
9 Attorneys for Laureate and Canter
10 CANTER AND ASSOCIATES, LLC and
11 LAUREATE EDUCATION, INC.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: November 27, 2007

SONNENSCHN NATH & ROSENTHAL LLP

2 By /s/ GAYLE M. ATHANACIO

3 Attorneys for Defendant

TEACHSCAPE, INC.

4
5
6 PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

7 Dated:

8
9 The Honorable Richard Seeborg

UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING
STIPULATED PROTECTIVE
ORDER (FOR IN-HOUSE COUNSEL)**

Judge: The Honorable Richard Seeborg

I, _____, declare:

1. My present address is _____.

My present occupation is _____.

My present employer is _____, which is a party in this litigation.

2. I agree that after exposure to another party's or a third-party's confidential information under the Stipulated Protective Order in this Proceeding, and until one (1) year after the conclusion of this Proceeding, I will not to partake in competitive decisionmaking – i.e., advice and participation in any or all of the party's decisions (pricing, sales, marketing, product design, and regulatory) regarding that party's master's degree and graduate course programs in the field of education – with the exception of decisions made in furtherance of the conduct or settlement of this Proceeding.

3. I have received a copy of the Stipulated Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United

1 States District Court for the Northern District of California solely for the purpose of
2 enforcing the Stipulated Protective Order.

3 4. I will comply with all provisions of the Stipulated Protective Order.
4 I will hold in confidence, will not disclose to anyone other than those persons specifically
5 authorized by the Stipulated Protective Order, and will use only for purposes of this action,
6 any information, documents or things designated as containing Confidential or Highly
7 Confidential information, including the substance and any copy, summary, abstract, excerpt,
8 index or description of such material, that is disclosed to me as well as any knowledge or
9 information derived from any of the above mentioned items which I receive in this action,
10 except as allowed in accordance with the Stipulated Protective Order. I will take reasonable
11 steps to restrict access to any Confidential or Highly Confidential information to only those
12 persons authorized by the Stipulated Protective Order to have such access.

13 5. I will return all materials containing Confidential or Highly Confidential
14 information that come into my possession, and all documents and things that I have
15 prepared relating thereto, to counsel for the party by whom I am employed when requested
16 to do so.

17 6. I understand that if I violate the provisions of the Stipulated Protective Order,
18 I will be subject to sanctions by the Court and that any or all of the parties or third-parties
19 that designate information pursuant to the Protective Order may assert other remedies
20 against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement
21 of the Protective Order in this action.

22 7. I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct.

24 8. Executed this ____ day of _____, at _____
25 _____.

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING
STIPULATED PROTECTIVE
ORDER (FOR EXPERTS AND
CONSULTANTS)**

Judge: The Honorable Richard Seeborg

I, _____, declare:

1. My present address is _____.

My present occupation is _____.

I am not a current employee of any of the parties in the litigation. My present employer, if any, is _____, and the address of my present employer is _____.

2. I have received a copy of the Stipulated Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United States District Court for the Northern District of California solely for the purpose of enforcing the Stipulated Protective Order.

3. I will comply with all provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Stipulated Protective Order, and will use only for purposes of this action,

1 any information, documents or things designated as containing Confidential or Highly
2 Confidential information, including the substance and any copy, summary, abstract, excerpt,
3 index or description of such material, that is disclosed to me as well as any knowledge or
4 information derived from any of the above mentioned items which I receive in this action,
5 except as allowed in accordance with the Stipulated Protective Order. I will take reasonable
6 steps to restrict access to any Confidential or Highly Confidential information to only those
7 persons authorized by the Stipulated Protective Order to have such access.

8 4. I will return all materials containing Confidential or Highly Confidential
9 information that come into my possession, and all documents and things that I have
10 prepared relating thereto, to counsel for the party by whom I am employed or retained, or
11 from whom I received such material when requested to do so.

12 5. I understand that if I violate the provisions of the Stipulated Protective Order,
13 I will be subject to sanctions by the Court and that any or all of the parties or third-parties
14 that designate information pursuant to the Stipulated Protective Order may assert other
15 remedies against me. I hereby submit to the jurisdiction of this Court for the purpose of
16 enforcement of the Protective Order in this action.

17 6. I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 7. Executed this ____ day of _____, at _____
20 _____.

21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING
STIPULATED PROTECTIVE
ORDER (FOR PARTY OFFICERS)**

Judge: The Honorable Richard Seeborg

I, _____, declare:

1. My present address is _____.

My present occupation is _____.

My present employer is _____, which is a party in this litigation.

2. I have received a copy of the Stipulated Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United States District Court for the Northern District of California solely for the purpose of enforcing the Stipulated Protective Order.

3. I will comply with all provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Stipulated Protective Order, and will use only for purposes of this action, any information, documents or things designated as containing Confidential information, including the substance and any copy, summary, abstract, excerpt, index or description of

1 such material, that is disclosed to me as well as any knowledge or information derived from
2 any of the above mentioned items which I receive in this action, except as allowed in
3 accordance with the Stipulated Protective Order. I will take reasonable steps to restrict
4 access to any Confidential information to only those persons authorized by the Stipulated
5 Protective Order to have such access.

6 5. I will return all materials containing Confidential information that come into
7 my possession, and all documents and things that I have prepared relating thereto, to
8 counsel for the party by whom I am employed when requested to do so.

9 6. I understand that if I violate the provisions of the Stipulated Protective Order,
10 I will be subject to sanctions by the Court and that any or all of the parties or third-parties
11 that designate information pursuant to the Protective Order may assert other remedies
12 against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement
13 of the Protective Order in this action.

14 7. I declare under penalty of perjury under the laws of the United States of
15 America that the foregoing is true and correct.

16 8. Executed this ____ day of _____, at _____
17 _____.

18
19
20 _____
21
22
23
24
25
26
27
28